

AMERICAN CETACEAN SOCIETY



September 8, 2003

Chief, Marine Mammal Conservation Division
ATTN: ZMRG, Office of Protected Species
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

VIA FAX: 301-713-0376

Re: Advanced Notice of Proposed Rulemaking for the Definition of the MMPA's
Zero Mortality Rate Goal (ZMRG); 68 Fed. Reg. 40888

Dear Sir or Madam:

On behalf of the American Cetacean Society, I want to thank you for the opportunity to comment on the above Notice.

While we applaud NMFS's recent efforts to establish regulations defining the Zero Mortality Rate Goal (ZMRG) for marine mammals, we are disappointed to note that "zero mortality" for *all* fisheries was to have been met by April 30, 2001, through a five-year Take Reduction Plan (TRP), a statutory requirement under the Marine Mammal Protection Act (MMPA) Sec. 118, that was to have been implemented no later than 1996. We are further disappointed to note that to this date there are still many fisheries without the required TRPs even established.

The three proposed "options" by NMFS to remedy this statutory deficiency and achieve "zero mortality" are insufficient, unacceptable and in at least two instances (Options 2 and 3) in direct conflict with the MMPA. We are especially concerned that the ANPR makes no attempt to include the language "approaching zero" in any of these options. The MMPA [Sec. 118 (b)(1)] specifically mandates that "fisheries shall reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate." Furthermore, we do not believe that an "insignificance threshold" (T_{ins}) is the same as "zero mortality approaching zero" and should not be used interchangeably, either in regulations or in the calculation of impacts to marine mammal stocks. If NMFS would contemplate using T_{ins} as a means to *reach* ZMRG, and promulgate regulations to that effect, we could support such an effort. While Option 1 makes an attempt to do this, it still assumes that T_{ins} is the same as ZMRG which, as we've stated before, does not satisfy the MMPA's requirement that all serious injuries and mortalities shall "approach zero." Despite the fact that NMFS is under the aegis of the Department of *Commerce*, it is still required by law to protect marine mammals, not conserve them because of their importance to the tuna fishing industry as long as such sustainable use is "insignificant."